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**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Statement of Issues Against:

Case No. S-390

CINDY MARIE JONES
1317 Agnew Street
Simi Valley, Calif. 93065

STATEMENT OF ISSUES

Respondent.

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Statement of Issues solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs (Board).
2. On or about December 13, 2006, the Respiratory Care Board of California, Department of Consumer Affairs received an application for a Respiratory Care License from Cindy Marie Jones (Respondent). On or about December 4, 2006, Cindy Marie Jones certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. The Board denied the application on June 11, 2007.

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JURISDICTION

3. This Statement of Issues is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 3710 of the Code states: “The Respiratory Care Board of California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3, the Respiratory Care Practice Act].”

5. Section 3718 of the Code states: “The board shall issue, deny, suspend, and revoke licenses to practice respiratory care as provided in this chapter.”

6. Section 3732, subdivision (b), of the Code states:

The board may deny an application, or may order the issuance of a license with terms and conditions, for any of the causes specified in this chapter for suspension or revocation of a license, including, but not limited to, those causes specified in Sections 3750, 3750.5, 3752.5, 3752.6, 3755, 3757, 3760, and 3761.

7. Section 3750 of the Code states, in pertinent part:

The board may order the denial, suspension or revocation of, or the imposition of probationary conditions upon, a license issued under this chapter, for any of the following causes:

...

(d) Conviction of a crime that substantially relates to the qualifications, functions, or duties of a respiratory care practitioner. The record of conviction or a certified copy thereof shall be conclusive evidence of the conviction.

...

(g) Conviction of a violation of any of the provisions of this chapter or of any provision of Division 2 (commencing with Section 500), or violating, or attempting to violate, directly or indirectly, or assisting in or

1 abetting the violation of, or conspiring to violate any provision or term of
2 this chapter or of any provision of Division 2 (commencing with Section
3 500).

4 8. Section 3750.5 of the Code states:

5 In addition to any other grounds specified in this chapter, the board
6 may deny, suspend, or revoke the license of any applicant or license holder
7 who has done any of the following:

8 (a) Obtained or possessed in violation of law, or except as directed
9 by a licensed physician and surgeon, dentist, or podiatrist administered to
10 himself or herself, or furnished or administered to another, any controlled
11 substances as defined in Division 10 (commencing with Section 11000) of
12 the Health and Safety Code, or any dangerous drug as defined in Article 2
13 (commencing with section 4015) of Chapter 9.

14 (b) Used any controlled substance as defined in Division 10
15 (commencing with Section 11000) of the Health and Safety Code, or any
16 dangerous drug as defined in Article 2 (commencing with section 4015) of
17 Chapter 9.

18 . . .

19 (d) Been convicted of a criminal offense involving the consumption
20 or self-administration of any of the substances described in subdivisions (a)
21 and (b), or the possession of, or falsification of a record pertaining to, the
22 substances described in subdivision (a), in which event the record of the
23 conviction is conclusive evidence thereof.

24 9. Section 3752 of the Code states:

25 A plea or verdict of guilty or a conviction following a plea of nolo
26 contendere made to a charge of any offense which substantially relates to
27 the qualifications, functions, or duties of a respiratory care practitioner is
28 deemed to be a conviction within the meaning of this article. The board

1 shall order the license suspended or revoked, or may decline to issue a
2 license, when the time for appeal has elapsed, or the judgment of
3 conviction has been affirmed on appeal or when an order granting
4 probation is made suspending the imposition of sentence, irrespective of a
5 subsequent order under Section 1203.4 of the Penal Code allowing the
6 person to withdraw his or her plea of guilty and to enter a plea of not guilty,
7 or setting aside the verdict of guilty, or dismissing the accusation,
8 information, or indictment.

9 10. California Code of Regulations, title 16, section 1399.370, states:

10 For the purposes of denial, suspension, or revocation of a license, a
11 crime or act shall be considered to be substantially related to the
12 qualifications, functions or duties of a respiratory care practitioner, if it
13 evidences present or potential unfitness of a licensee to perform the
14 functions authorized by his or her license or in a manner inconsistent with
15 the public health, safety, or welfare. Such crimes or acts shall include but
16 not be limited to those involving the following:

17 (a) Violating or attempting to violate, directly or indirectly, or
18 assisting or abetting the violation of or conspiring to violate any provision
19 or term of the Act.

20 11. Section 492 of the Code states:

21 Notwithstanding any other provision of law, successful completion
22 of any diversion program under the Penal Code, or successful completion
23 of an alcohol and drug problem assessment program . . . shall not prohibit
24 any agency established under Division 2 (commencing with Section 500) of
25 this code, or any initiative act referred to in that division, from taking
26 disciplinary action against a licensee or from denying a license for
27 professional misconduct, notwithstanding that evidence of that misconduct
28 may be recorded in a record pertaining to an arrest.

1 COST RECOVERY

2 12. Section 3753.5, subdivision (a) of the Code states:

3 In any order issued in resolution of a disciplinary proceeding before
4 the board, the board or the administrative law judge may direct any
5 practitioner or applicant found to have committed a violation or violations
6 of law to pay to the board a sum not to exceed the costs of the investigation
7 and prosecution of the case.

8 13. Section 3753.7 of the Code states:

9 For purposes of the Respiratory Care Practice Act, costs of
10 prosecution shall include attorney general or other prosecuting attorney
11 fees, expert witness fees, and other administrative, filing, and service fees."

12 14. Section 3753.1 of the Code states:

13 (a) An administrative disciplinary decision imposing terms of
14 probation may include, among other things, a requirement that the
15 licensee-probationer pay the monetary costs associated with monitoring the
16 probation.

17 CONTROLLED SUBSTANCES

18 15. Methamphetamine is a Schedule II controlled substance pursuant to
19 Health and Safety Code Section 11055.

20 FIRST CAUSE FOR DENIAL OF APPLICATION

21 (Conviction of Crimes Involving Controlled Substances)

22 16. Respondent's application is subject to denial under Code sections
23 3732, subdivision (b), 3750, subdivision (d), and 3750.5, subdivision (d), in that
24 respondent was convicted of crimes involving the possession and use of controlled
25 substances, which crimes are substantially related to the qualifications, functions and
26 duties of a respiratory care practitioner. The circumstances are as follows:

27 Conviction, Case Number 94C009446

28 17. On September 21, 1994, respondent was arrested for a violation of

1 Health and Safety Code section 11550, subdivision (a), being under the influence of a
2 controlled substance. According to the police report, police served a felony warrant on an
3 individual in a Simi Valley home when they contacted respondent at the home.

4 Respondent indicated she had an outstanding traffic warrant, and she was placed under
5 arrest. When police observed that respondent's pupils appeared dilated and sluggish in
6 responding to light stimuli, that respondent's right nostril appeared red, inflamed, and
7 moist, and respondent had an elevated pulse rate, respondent was placed under arrest for
8 being under the influence of a controlled substance.

9 18. On or about October 17, 1994, a criminal complaint was filed
10 against respondent alleging a violation of Health and Safety Code section 11550,
11 subdivision (a), being under the influence of a controlled substance, methamphetamine, in
12 *People v. Cindy Marie Jones*, Superior Court of California, County of Ventura, case
13 number 94C009446.

14 19. On or about October 26, 1994, respondent was placed in diversion
15 pursuant to Penal Code section 1000, and criminal proceedings were suspended.

16 20. On or about May 4, 1995, diversion was revoked, and criminal
17 proceedings were reinstated. On or about May 31, 1995, diversion was reinstated. On or
18 about June 29, 1995, diversion was again revoked, and criminal proceedings were
19 reinstated.

20 21. On or about August 4, 1995, respondent pled guilty to being under
21 the influence of a controlled substance, in violation of Health and Safety Code section
22 11550, subdivision (a).

23 22. On or about September 8, 1995, respondent was placed on formal
24 probation for a period of 36 months and was ordered to serve 90 days in a residential
25 treatment program. The case was closed on September 1, 2005.

26 Conviction, Case Number CR36922A

27 23. On or about April 22, 1995, respondent was arrested for being under
28 the influence of a controlled substance, in violation of Health and Safety Code section

1 11550, subdivision (a), and possession of a controlled substance for sale, in violation of
2 Health and Safety Code section 11378.

3 24. On or about August 11, 1995, an information was filed in *People v.*
4 *Cindy Marie Jones*, Superior Court of California, County of Ventura, case number
5 CR39622A. In the information, respondent was charged with being under the influence of
6 a controlled substance, methamphetamine, in violation of Health and Safety Code section
7 11550, subdivision (a), and unauthorized possession of a controlled substance, in violation
8 of Health and Safety Code section 11377, subdivision (a).

9 25. On or about August 4, 1995, respondent pled guilty to both counts.

10 26. On or about September 8, 1995, respondent was placed on
11 probation for a term of 36 months.

12 27. On or about December 16, 1997, respondent admitted to a violation
13 of probation, and probation was revoked. Probation was thereafter reinstated with
14 modifications, including a sentence of 30 days to be served in the Ventura County Jail.

15 28. On or about June 7, 2002, probation was terminated, the plea was
16 withdrawn, the offense was declared a misdemeanor, and the conviction was expunged
17 pursuant to Penal Code section 1203.4.

18 SECOND CAUSE FOR DENIAL OF APPLICATION

19 (Possession of a Controlled Substance)

20 29. Respondent's application is subject to denial under Code sections
21 3732, subdivision (a), 3750, subdivision (g), and 3750.5, subdivision (a), in that
22 respondent possessed a controlled substance.

23 30. The allegations of paragraphs 15 through 26 are incorporated by
24 reference as if fully set forth herein.

25 THIRD CAUSE FOR DENIAL OF APPLICATION

26 (Use of Controlled Substance)

27 31. Respondent's application is subject to denial under Code sections
28 3732, subdivision (b), 3750, subdivision (g), and 3750.5, subdivision (b), in that

1 respondent used a controlled substance. The circumstances are as follows:

2 32. The allegations of paragraphs 15 through 26 are incorporated by
3 reference as if fully set forth herein.

4 PRAYER

5 WHEREFORE, Complainant requests that a hearing be held on the matters
6 herein alleged, and that following the hearing, the Respiratory Care Board issue a decision:

7 1. Denying the application of Cindy Marie Jones for a Respiratory
8 Care License;

9 2. Directing Cindy Marie Jones to pay the Respiratory Care Board of
10 California the costs of the investigation and enforcement of this case, and if placed on
11 probation, the costs of probation monitoring;

12 3. Taking such other and further action as deemed necessary and
13 proper.

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15 DATED: November 29, 2007

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18 Original signed by Liane Zimmerman for:
19 STEPHANIE NUNEZ
20 Executive Officer
21 Respiratory Care Board of California
22 Department of Consumer Affairs
23 State of California
24 Complainant
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